REPORT OF THE COURTS COMMISSION

to the North Carolina General Assembly
1969

State of North Carolina
COURTS COMMISSION

STATE LEGISLATIVE BUILDING
RALEIGH, N. C.

TO THE MEMBERS OF THE 1969 GENERAL ASSEMBLY:

This report is submitted pursuant to Joint Resolution 73 of the 1963 General Assembly.

/s/ J. Ruffin Bailey

J. RUFFIN BAILEY

Chairman

C O N T E N T S

I. INTRODUCTION

In 1967, the second biennial report of the North Carolina Courts Commission to the General Assembly concluded:

> With ... this report, phase two of the work of the Courts Commission ...[is]... completed. A District Court Division statute, complete in all details for operation in every county of the State, has been adopted; an intermediate Court of Appeals, together with an entirely new appellate jurisdiction statute, has been created, and will shortly be in operation; the system for the prosecution of all crimes in both trial levels of the General Court of Justice has been redesigned and modernized; the procedure for the preparation of jury lists and the drawing of jurors has been revised, and provision made for jury service by all qualified citizens; laws with respect to the retirement and recall of Appellate and Superior Court Division judges have been rewritten and brought up to date; and a broad and thorough foundation has been laid for completion of the Commission's assigned task in the three years remaining to it.

In phase three - the third biennium - the Commission's task has been primarily one of building on the major pieces of legislation enacted in 1965 and 1967. The studies done by the Commission in 1967-68, and the resulting legislative recommendations reported herein, for the most part are merely extensions or supplements to the basic statutes enacted earlier. For example, observation of the operation of the district court system for two years in 22 counties, of the juror selection law for one year in 100 counties, and of the Court of Appeals for one year at the appellate level, has indicated a need for a few minor clarifying or technical amendments to each of these laws; in addition, the district court law, previously complete in all its state-wide applications, has been extended to the 17 counties not yet fully covered

by recommendations for numbers of judges, magistrates, and full-time assistant solicitors, and for additional seats of court.

Overall operations have also indicated a need for modernization of the present Judicial Council statute, particularly in the area of membership and duties. Further, the new jurisdictional allocations at the trial court levels have made increasingly obvious the need for revision of the present laws and procedures with respect to juveniles.

Finally, Senate Resolution 654(June, 1967) directed the Commission to study the feasibility of a public defender system for North Carolina. Pursuant to this mandate, and also concerned by complaints about the adequacy of our system for the protection of the constitutional rights of indigent persons accused of crime, and the increasing interest shown by the federal courts in this category of cases, the Commission felt it necessary to analyze thoroughly all aspects of our laws about representation of indigents. The Commission's study in this latter area has resulted in conviction that significant changes in present practices are desirable. Since this last project may be of greatest interest, it will be discussed first.

II. REPRESENTATION OF INDIGENTS

Scope of Entitlement

Until 1963, North Carolina's constitutional and statutory right to counsel had been interpreted as applying to indigents accused of crime in capital cases only.* In that year the now-famous Gideon v. Wainwright decision was handed down by the U. S. Supreme Court. Fortunately the General Assembly was in session. Pursuant to the Gideon mandate, it enlarged an indigent defendant's right to counsel to include all felony cases and such misdemeanor cases as the superior court judge, in his discretion, deemed warranted. G.S. 15-4.1, et seq. (While Gideon spoke of entitlement to counsel for "all crimes", the court in subsequent cases has refused several opportunities to affirm this broad language, and the exact extent to which counsel must be provided at government expense for indigent persons accused of misdemeanors is still debatable.)

The 1967 General Assembly extended the right of indigents to counsel to preliminary examinations in felony cases, and authorized district court judges to appoint counsel for such proceedings. This was in recognition of the fact that counsel in a felony case, to be of maximum effectiveness, must be available to the defendant at the earliest practicable time. The Assembly also extended the right in indigency cases to a juvenile facing a delinquency determination which might result in commitment to an institution. G.S. 110-29.1. This latter extension was prompted by the Gault case, decided by the U. S. Supreme Court while the 1967 General Assembly was in session.

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* Citations to cases mentioned in this discussion are collected at the end of this section.

Gideon and Gault are but two of several recent U. S. Supreme Court cases which in most states have extended the right to counsel to indigent persons far beyond its traditional bounds. Among the most widely known of these additional cases are Escobedo and Miranda, which extended the right to counsel to in-custody interrogations. Other pertinent decisions, some decided since the 1967 session of the General Assembly, are Wade, Gilbert, and Stovall, which made clear the requirement for counsel at a pre-trial identification ("line-up") procedure involving the accused, and Mempa, which seems to require counsel in a probation revocation hearing, at least in felony cases.

In this rapidly expanding field the statutory law has not kept abreast of the case law. The result is that our 1963 statute, as amended in 1967, is no longer adequate, and the Commission has concluded that the best solution is a complete revision of current law to reflect in an orderly manner the coverage demanded by the federal courts.

In recommending extension of the right to counsel to indigent persons, the Commission has not lost sight of the increased burden such extension will impose on the bar. It has been careful not to extend the right significantly beyond the outlines of the case law, particularly those cases referred to earlier in this report. The most prominent example of this conservative approach involves the right to counsel in misdemeanor cases. As noted earlier, the U. S. Supreme Court has hinted at, but refrained from an outright prescription of, a right to counsel in all such cases. Several jurisdictions, perhaps sensing that entitlement to counsel might eventually be mandated for all crimes, have gone ahead and authorized representation at government expense for all indigent misdemeanants. Other states have

drawn the line at, for example, misdemeanors for which confinement is possible, or confinement is likely, or misdemeanors for which confinement for six months or more is possible or likely. The Commission has examined a variety of these plans from other states, from model acts, and from legal literature, and has found none exactly suited to the needs of North Carolina. The test "if confinement is likely" is too subjective, meaning different things to different judges, a problem which would be aggravated by our system of rotation of judges; the test of "six month's confinement" or "more than six month's confinement" would be both impracticable and expensive, because of the large number of relatively petty misdemeanors in our criminal code for which up to two years' confinement is authorized, when the most likely sentence in each instance falls far short of six-month's confinement, or even any confinement at all. The Commission also felt that some flexibility should be left in the standard to be prescribed, in the event - not unlikely - that the Supreme Court subsequently defines the limits of the right with more precision. Accordingly, the Commission recommends that counsel be appointed for each indigent person accused of a misdemeanor when, in the opinion of the court, counsel is warranted. This is a continuation of the present statutory authority in misdemeanor cases which has worked reasonably well so far. It avoids the rigidity of a specific standard which, in future Supreme Court decisions, might be found lacking. It does not burden the bar or the courts or the public treasury with excessive numbers of minor cases in which little or no confinement is in prospect; and it leaves the presiding judge free to expand the right with the growth of the case law.*

In at least two areas the Commission does not recommend extension of the right to counsel as far as some federal (but not U. S. Supreme Court) courts have held that counsel is required. These are revocation of parole cases and

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*For more on counsel for indigent misdemeanants, see ADDENDUM, p. 14.

civil proceedings for the hospitalization of the mentally ill. The controlling consideration here has been not merely the absence of a high court mandate, but the sheer volume of cases. Hundreds of parolees have their parole revoked each year, frequently for conviction of additional criminal offenses. The Parole Board meets in Raleigh. To furnish counsel for a hearing before the Board for each parolee would literally inundate the Wake County bar, and for the Parole Board to spread the burden among the lawyers of the State by conducting hearings in various areas of the State would require a very expensive expansion of the personnel and budget of the Board. Similarly, furnishing counsel to the mentally ill (and inebriates) at commitment hearings would increase the work-load of the bar, entirely aside from adequacy of the compensation to the individual attorney or the cumulative impact on the State budget, to an extent quite likely beyond its capacity. In either case the administration of justice generally would suffer delays if not a substantial breakdown. Before the right to counsel can be freely extended to these categories of cases, much further study and preparation by the bar and the public at large is required.

The Commission recommends the extension of the right to counsel to civil arrest and bail cases and to extradition proceedings. Each of these is likely to involve loss of liberty (extradition is almost always limited to a felony), and the number of cases is but a handful per year.

The right to counsel in post-conviction proceedings and habeas corpus hearings is carried forward intact from existing law. In appeals, the right is extended beyond the state court system to direct review by the U. S. Supreme Court of decisions of our highest state court in which review may be had; again, the number of cases in this category is a mere handful. This latter coverage is not designed to duplicate any coverage afforded by the federal Criminal Justice Act of 1964.

Assignment of Counsel

G.S. 15-5.1 provides that the N. C. State Bar Council shall have authority to make rules and regulations relating to the manner and method of assigning counsel in indigency cases, and the adoption of plans by district bars regarding the method of assignment of counsel among the licensed attorneys of the district. District bar plans frequently further delegate to the county bars the method of assigning counsel to represent an indigent in a particular county. This system has produced the necessary flexibility, and has worked reasonably well, particularly in the more populous counties. It has worked less well in the rural districts. The Commission studied the various district plans on file with the State Bar, and queried the clerk of superior court in each county concerning operational details of each local plan.

There is a lack of uniformity from district to district, and county to county, in the actual mechanics of assigning counsel. In many districts, the local plan for assignment of counsel, initiated in 1964, has not been kept up to date. New names have not been added to rosters of eligible attorneys, nor ineligible names removed, and local practices varying from the plan as published have sprung up. In a few counties the clerk is not aware of any local plan having ever been promulgated; in others the clerk has an up-to-date plan but stated that the judge does not always follow it. In a typical county the clerk furnishes the presiding judge with a list of attorneys, and the judge may follow the list in rotation, appoint from it at random, or ignore it and appoint from the attorneys present in the courtroom. Whether the lists are official or informal, attorneys are frequently excused for age, health, or ethical conflicts, and sometimes on request.

In some counties, the names of all attorneys, or attorneys under a certain age (usually 65) are on the list; in others, only the names of a restricted number of volunteers, not all of whom may be thoroughly grounded in the practice of criminal law, are listed.

Since the fee allowed by the court for representing an indigent is frequently substantially less than counsel would receive if privately retained, appointed counsel in some counties are unjustly bearing more than their share of a common burden. The system also is subject to the criticism that the experience level of assigned counsel is not always proportionate to the seriousness of the crime charged. And a conscientious judge who strives to appoint experienced counsel to represent an indigent accused of a more serious offense may increase the enforced sacrifice borne by the experienced attorney.

The Commission does not wish to overemphasize the administrative difficulties of the present assigned counsel plan. Flexibility in local plans is essential. In any event, no better system for assigning counsel has been recommended to the Commission, and the Commission feels that with some central supervision over the system not now provided and with an increase in the level of fees awarded attorneys in indigency cases, the difficulties can be substantially overcome. By way of supervision, the Commission recommends that the administrative office of the courts be authorized to supervise and coordinate the operation of the various local regulations for the assignment of counsel to the end that all indigents entitled to appointed counsel are properly represented and that the burden of providing representation falls as equally as possible on the shoulders of as many qualified members of the bar as possible. As for compensation for attorneys who represent indigents, the Commission is of the opinion

that, in spite of the language of G.S. 15-5, which provides that the trial judge shall approve a fee "which shall be reasonable and commensurate with the time consumed, the nature of the case, the amount of fees usually charged for such cases in the county or locality", fees have frequently fallen short of this measuring stick. The Commission accordingly recommends a clarification of this formula, but with no change in its objective.

In the most populous districts the Commission feels that the representation of indigents can be more efficiently accomplished by replacing the assigned counsel system with a public defender system. This recommendation is discussed separately, below.

Office of Public Defender

There are two major systems for providing legal counsel for indigent defendants. One is the assigned counsel system now in effect throughout North Carolina. The other is the public defender system, in which the state or local government unit supports an office staffed with salaried attorneys whose sole responsibility is the representation of indigents. There are variations and combinations of these two plans in various states, but the variations represent no departure in principle from the two basic plans.

The office of public defender is not new; it has existed in some parts of the country for half a century. Since the Gideon case was decided in 1963, however, public defender systems have increased many fold. The tremendous volume of cases generated by Gideon and its successor decisions has spurred interest in alternatives to the time-honored but never entirely satisfactory assigned counsel plan. This surge of interest has resulted in over 200 counties in the U. S. adopting defender plans, many of them

since 1963. A large number of metropolitan areas are now serviced by public defenders. And at least seven states, the most recent being Florida, have created a statewide public defender network. The Commission felt it appropriate to study the public defender system in depth, not just because of the Senate Resolution directing such a study, but because the defender system seemed to offer a practical alternative, at least under certain circumstances, to the assigned counsel plan.

The major advantages of a defender system are said to be these:

- The defender system provides experienced, competent counsel. A full-time public defender can accumulate in a few months more practical experience than private counsel, assigned occasionally from the bar at large, can acquire in years. Of course such experience can be retained in a defender office only if salaries are attractive enough to keep turnover to a minimum.

- The defender system in larger centers of population is more economical to operate. The data available demonstrates this clearly in the major metropolitan areas of the country. Just where the break-even point lies, in terms of population, is difficult to estimate accurately. An American Bar Foundation study* (published in 1965, but based primarily on 1962-1963 data) indicates that where the unit population is 400,000 or more, the median expenditure for defender offices is less than that for assigned counsel systems. Since this data was collected before Gideon reached its fullest effect, and since later cases have expanded the right still further, it is quite likely that in 1969 the break-even point is considerably lower, on the average, than 400,000. If assigned counsel were fully compensated for their services the resulting expense would in all likelihood leave little room for serious challenge of the proposition that a defender system can be operated more economically than an assigned counsel system in localities well below 400,000 in population. In 1967, the state of North Carolina paid over $103,000 to assigned counsel in Mecklenburg County, a county of about 340,000 population. This sum would staff and support a three to four lawyer defender's office, with a sizeable amount left over to compensate assigned counsel who must be appointed in those cases in which the defender, for one reason or another, is disqualified.

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*Silverstein, Defense of the Poor, American Bar Foundation, Volume I (1965).

The Commission heard a number of North Carolina attorneys experienced in the practice of criminal law. Each voiced the customary complaints against the assigned counsel system (burden of representation falls too heavily on the small segment of the bar experienced in criminal practice, compensation is grossly inadequate, service to indigents is spotty in quality). Each recommended adoption of a public defender system, at least for the larger cities and counties in the state. None foresaw any substantial objection to the defender system.

The criticism most frequently leveled against the defender system is the fear that a defender is likely to become less zealous or less independent than he should be. The American Bar Foundation study cited earlier offers little support for this fear. Assigned counsel, frequently lacking experience in criminal matters, have been known to seek a plea bargain with the solicitor rather than face the unknown outcome of a contest in an unfamiliar forum. The public defender should never have this problem; furthermore, from his broader experience, he is better able to evaluate the prosecution's case and know when a plea bargain is to be preferred to a not-guilty plea. As for independence, the Foundation study has this to say:

> It is the overwhelming opinion among those who know the public defender system most intimately that the system does not and certainly need not undermine the independence of the defender ...Like the house counsel or government lawyer, the defender works for a salary instead of individual fees. Like the lawyer whose clients come to him through...an automobile casualty company, the public defender exercises little choice in the individual employment relationship. The public defender is just as much a product of the twentieth century as the doctor who works for a public hospital or a state university clinic. Each may have lost something of his traditional autonomy, but neither needs to compromise his standards of professional competence. (p. 52)

After weighing the pros and cons of the public defender system, and studying a rapidly-growing and impressive array of legal literature on the

subject, the Commission felt than an on-the-spot first hand observation of a public defender system in operation would be valuable. The Commission chose Florida, a state which adopted a state-wide public defender system in 1964. Three defender districts, selected for their variety and comparability to various districts in North Carolina, were visited in April, 1968, by a delegation of the Commission headed by Senator Lindsay Warren, Jr. In these districts - centered on the cities of Jacksonville, Orlando, and Gainesville - the Commission talked at length with the public defender, several assistant public defenders, trial judges, police officials, a prosecutor, and a defender's investigator. The Commission was most favorably impressed with the Florida system, and found that all parties interviewed concerning the system considered it to be a vast improvement over the former assigned counsel system. The Commission drew on its experience with the Florida system somewhat in proposing a defender system for parts of North Carolina.*

In selecting districts in North Carolina for establishment of a public defender, the Commission considered several criteria. Population, of course, was the most important consideration, since a large population provides the case load which makes the defender system efficient. Geography was the second important consideration. These two primary factors led to the conclusion that several large one-county judicial districts could economically justify a public defender. The same factors caused the Commission to conclude that the districts with the least population and with the most counties could not at present justify a defender. The cruicial question then became a matter of where the line should be drawn.

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*A detailed report of the Florida visit is available to interested members of the General Assembly.

The Commission recommends initial inclusion of the following districts: the 26th (Mecklenburg County), the 18th (Guilford County), the 21st (Forsyth County), the 10th (Wake County), and the 12th (Cumberland and Hoke Counties). These districts contain the five largest counties in terms of population (1960 census), and are all one-county districts, with the exception of the 12th. In addition, to obtain geographic and multi-county diversification, the Commission recommends inclusion of the 25th judicial district in the west and the 7th judicial district in the east. These districts are chosen, frankly, somewhat for experimental purposes. It is by no means certain that their inclusion can be entirely justified on economic grounds; this is a matter which can be determined only by experience. Each is a fairly populous, growing, three-county district, however, and successful employment of the public defender system in these two districts will provide a reasonable base for gradual extension of the system to additional multi-county districts with comparable or even lesser population densities.

In summary, the Commission, after studying in depth the problem of representation of indigents, recommends legislation which: (1) revises present statutes with respect to the scope of the right to counsel to encompass coverage required by applicable case law; (2) strengthens the present assigned counsel system by providing adequate compensation for counsel and supervision of local assignment systems to assure greater equality and fairness in assignments; (3) replaces the assigned counsel system in a number of the most populous districts by a defender system, to assure greater efficiency and economy; and, (4) provides for monitoring of both systems with a view to recommending improvements in each based on experience.

Cases Cited

1. Gideon v. Wainwright, 372 U.S. 335 (1963).

2. In Re Gault, 387 U.S. 1 (1967).

3. Escobedo v. Illinois, 378 U.S. 478 (1964).

4. Miranda v. Arizona, 384 U.S. 436 (1966).

5. U.S. v. Wade, 388 U.S. 218 (1967).

6. Gilbert v. California, 388 U.S. 263 (1967).

7. Stovall v. Denno, 388 U.S. 293 (1967).

8. Mempa v. Rhay, 389 U.S. 128 (1967).

ADDENDUM - As the foregoing discussion was being printed, the North Carolina Supreme Court on January 21, 1969, handed down State v. Morris, ___N.C.___. In Morris, the Supreme Court held that a person accused of a "serious" crime, if indigent, must be offered the services of legal counsel, and defined "serious crime" to include any offense "for which the authorized punishment exceeds six months' imprisonment and a $500 fine." The decision specifically set aside as unconstitutional G.S. 15-4.1 "insofar as it purports to leave to the discretion of the trial judge the appointment of counsel for indigent defendants charged with serious offenses..." While Morris overturned a superior court conviction of a misdemeanor which had been appealed from a lower court for trial de novo, there is no reason in logic or common sense why the opinion should not embrace trials for serious misdemeanors in the court of first instance, the district court. Therefore, the Commission feels bound to recommend to the General Assembly that counsel be provided for indigents accused of serious misdemeanors, as defined above.

While the Morris case provides a measure of certainty in a previously unsettled area, it imposes an enormous additional burden on the bar of the State, inasmuch as there are scores of offenses in our criminal statutes for which the maximum authorized punishment exceeds six months' confinement and a fine of $500. The bulk of these offenses in actual practice nearly always draws less than six months' confinement - in fact, no confinement at all is commonly imposed for many of them - so that it is appropriate to examine as a priority matter the entire range of general misdemeanors, with a view to reducing the maximum imposable punishment to not more than six months' confinement in those cases in which confinement in excess of this time would be inappropriate. The Judicial Council is undertaking to do this, and the Courts Commission heartily endorses this effort.

III. REVISION OF JUVENILE COURT LAW

Background

The statutes governing the jurisdiction and operations of the juvenile court were enacted in 1919 and are contained in Article 2 of Chapter 110 of the North Carolina General Statutes (G.S. 110-21 through -44). While this was progressive legislation when the juvenile court was created in 1919, these statutes now seem dated and inadequate for the following reasons: (1) The juvenile court is no longer a part-time responsibility of the clerk of superior court in each county as provided by Article 2 of Chapter 110; since the juvenile jurisdiction is now included within the jurisdiction of the district court, revisions are necessary to reflect this change. (2) Jurisdiction and procedures are broadly and inadequately defined under the present law, and such definitions leave too much discretion to the judge exercising juvenile jurisdiction. The result has been a variety of interpretations and approaches to juvenile court proceedings from place to place within the State. Further, recent decisions of the U. S. Supreme Court (namely Kent and Gault) more precisely define the due process constitutional rights of children in juvenile delinquency cases. These decisions with their emphasis on procedures and rights of children further point to the inadequacies of our present statutes relating to juvenile cases.

Approach of the Commission

The Commission began its study of juvenile law by reviewing the Gault and Kent decisions to determine what procedures are required to meet their constitutional requirements, which may be summarized as follows: A child who is alleged to be delinquent and who may be committed to a

state institution has specified due process rights in the adjudicatory stage of the court hearing, including right to notice of the charges, right to counsel, the privilege against self-incrimination, and the right to confront and cross-examine witnesses who testify concerning his behavior. Further, if a child is charged with a felony and the juvenile court is considering transfer of the case to the adult criminal court, there must be a hearing in juvenile court prior to transfer which conforms to the due process standards and which provides fair treatment for the child; the child has a right to counsel, and the child's attorney has a right to examine any juvenile court or probation records which are considered by the court in deciding whether to transfer the case. Further, the judge must specify the reasons for transfer in his order.

The Commission also consulted professional literature to explore what standards and procedures it should consider (for example, Standards for Juvenile and Family Courts, U. S. Department of Health, Education, and Welfare, 1966). It also studied the Uniform Juvenile Court Act (prepared by the National Conference of Commissioners on Uniform State Laws, 1967) and recent juvenile court revisions adopted by other states (the Juvenile Court Act adopted in 1967 in Illinois is an example). None of these resources provided a total answer which would adapt to the incorporation of juvenile jurisdiction in the district court and meet other needs which the Commission felt are appropriate to North Carolina.

Conclusions and Objectives of the Commission

After study and evaluation, the Commission reached the following conclusions. Article 2 of Chapter 110 of the North Carolina General Statutes should be entirely rewritten (with the exception of two sections,

G.S. 110-25.1 and G.S. 110-39, which should be more appropriately assigned to other chapters) to update juvenile procedures, to more precisely define jurisdiction, and to incorporate juvenile jurisdiction appropriately into the district court. Juvenile jurisdiction and procedures should be incorporated in Chapter 7A, which defines jurisdiction and procedures of the district court. Sections dealing with juvenile services should be rewritten and remain in Article 2 of Chapter 110, which should be given a new title, "Juvenile Services."

The Commission did not attempt to study in depth the many issues related to the quality and availability of juvenile services (including juvenile probation services, detention homes, foster homes and other community resources, training schools, after-care services, etc.). While the Commission recognizes there is concern over the organization of these services (including the proper roles of state and county welfare departments, family counselors, Board of Juvenile Correction, Administrative Office of the Courts, etc.), the Commission concluded that these issues were beyond the scope of its inquiry. The Commission is aware that the Governor's Council on Juvenile Delinquency is planning to secure funds to finance a professional study of the quality, availability and organization of juvenile services. Therefore, the Commission concluded that for the present, it would recommend that those sections of the juvenile court law which deal with services to juveniles be recodified without any major policy changes.

The Commission struggled with other issues. Under existing law, the juvenile court has jurisdiction of children under the age of sixteen years. Should this age jurisdiction be increased to include children age 16 or 17? The Commission concluded no, for several reasons. They were reluctant

to recommend that the large number of traffic cases involving children sixteen years of age or older be handled under juvenile procedures in the district court. Further, there was some feeling that we need to do a better job for children under sixteen years of age before the age jurisdiction is enlarged. Finally, there was concern over the impact of increasing the age jurisdiction upon the populations of juvenile institutions operated by the Board of Juvenile Correction, which seem crowded at times.

There is a tendency in modern juvenile court legislation to define delinquency in terms of offenses which would be criminal if committed by an adult. It is considered advisable to develop a new category of jurisdiction to deal with the child who is truant or incorrigible (such as "child in need of supervision" or "unmanageable child"). This would avoid the stigma of the label "delinquent" being attached to many children who come into juvenile courts for truancy or other behavior which involves no criminal offense. Further, there is a trend to attempt to deal with the "child in need of supervision" or "unmanageable child" using community resources rather than through commitment to a training school for delinquent children. The Commission is recommending a new category of jurisdiction--the "undisciplined child"--to include the child who is truant or beyond parental control. However, the proposed revision does allow commitment of the "undisciplined child" to training school in the discretion of the judge exercising juvenile jurisdiction, since there are not always adequate community resources to deal with truancy or children who are beyond parental control or who have other behavior problems.

The Commission's proposed legislation contains several areas where limited policy changes are involved. There are large numbers of children

being raised in foster homes at public expense who could be adopted if they could be legally cleared for adoption. The Commission studied this problem and recommends a new section on termination of parental rights in certain situations. Under existing law, the jurisdiction of the juvenile court terminates if a child is committed to a training school operated by the North Carolina Board of Juvenile Correction or other state institution (see G.S. 110-21). The Commission adopted the principle that the court should retain jurisdiction and control after disposition so that the court could enter such other order as may be appropriate, even after commitment to training school. Under existing law, if a child is released from training school after his sixteenth birthday, it is impossible for the court exercising juvenile jurisdiction to re-acquire jurisdiction. Under the proposed legislation, the Board of Juvenile Correction would determine what period of time the child should remain in the institution; when the child is ready for release, the Board would make a motion in the cause in the district court which committed the child for such further orders concerning the child's custody, placement, support, etc. as may be appropriate. The proposed section on juvenile records also allows such records to be divided into two parts--social and legal--in order to provide a higher degree of confidentiality to social or medical material about a child and his family. The Commission also concluded that the district court judge exercising juvenile jurisdiction should have the right to commit a child who is mentally ill or mentally retarded to the appropriate state institution if there is medical certification of the need for such commitment.

Summary

These changes will incorporate the juvenile jurisdiction into the district court, will more specifically define juvenile jurisdiction, and

will require more attention on the part of the court to procedures and constitutional rights of children and their parents. The complicated issues related to the quality and organization of juvenile services will need to be solved by future action of the General Assembly after further study. The limited policy changes being recommended will provide improvements in the situations enumerated above.

Prior to introduction of this legislation in the General Assembly, the Commission is circulating copies of the proposed revisions of the juvenile court laws to interested state agencies (including the Board of Juvenile Correction, the State Department of Public Welfare, the Administrative Office of the Courts and the State Probation Commission) and to several judges with a special interest in juvenile corrections. These professional persons are being offered a briefing on the proposed legislation and an opportunity to express their point of view directly to the Commission prior to introduction of the legislation if they desire to do so.

IV. AMENDMENTS TO THE JUDICIAL DEPARTMENT ACT OF 1965 (General Statutes, Chapter 7A)

The Judicial Act of 1965 has worked remarkedly well in 22 counties for over two years. Since December, 1968, it has been undergoing a "break-in" period in 61 additional counties. Experience to date has revealed no major difficulties requiring legislative action. A number of additional amendments to the basic law are required, nevertheless. These fall into three categories. First, it is necessary to extend the district court system to the 17 counties which will not come under the new law until December, 1970. To do this an amendment to the table in G.S. 7A-133 is proposed. This amendment provides for a quota of judges and magistrates for these 17 counties, grouped in five districts, and for additional seats of court in several counties. Since prosecutors and assistant prosecutors are being replaced by assistant solicitors in 1971, under the terms of separate legislation enacted in 1967, it is necessary also to provide a quota of full-time assistant solicitors for each district. With these additions, the district court system will be structurally complete, and the system will be operational in all 100 counties of the state.

Second, experience has indicated a need for a number of minor clarifying or technical amendments to the basic law. Typical of these are: an amendment making it clear that the court reporter's original notes, whether shorthand, stenotyped, or soundscribed, are the property of the state; an amendment to the small claims procedure providing that the plaintiff shall not be notified of the time and place of trial until service is obtained on the defendant; and a downward adjustment in the cost of copies of official records. Included in this category also are upward adjustments in the salaries of all judicial officials, and inclusion of coroner's jurors in the juror's fee bill.

A third category of changes is best described as "statutory housekeeping." A number of sections of Chapter 7, Courts, dealing with the superior court division, has been transferred to Chaper 7A. Modernizing the language of some of the affected sections was also necessary, but these changes are editorial rather than substantive. This process leaves in Chapter 7 only a few sections which will have viability beyond 1970. These will be recommended for transfer to Chapter 7A in 1971, at which time Chapter 7 will become entirely inoperative, and can be repealed.

V. PROPOSED AMENDMENTS TO GENERAL STATUTE CHAPTER 9, "JURORS"

The Commission has been more than pleased with the operational success of its proposed revision of the procedures for the selection of jurors, adopted by the General Assembly in 1967. In particular, the elimination of occupational exemptions from jury service has resulted in a much broader cross-section of the community being available for jury service, and in nearly all instances has produced higher-quality jurors.

The Commission has examined several dozen jury commission reports, and observed the detailed operation of the new procedures in a number of counties of varying sizes. No major technical difficulties have been uncovered, and accordingly no major amendments to the 1967 Act are recommended. The following proposals will serve to correct the few minor problems revealed to date.

In a number of counties the jury commission report or actual practice under the new law indicates that the jury commission failed adequately to screen the raw list of prospective jurors to remove therefrom a sizeable percentage of names of persons deceased, disabled, or nonresident. The best efforts of a jury commission to eliminate these persons will not be entirely successful, of course, but a more serious effort in this direction would save time and money in the long run. In two places a rephrasing of the current law is recommended to make it abundantly clear that the jury commission is to screen unqualified persons from the raw list, leaving insofar as possible only qualified jurors on the final list.

To aid jury commissioners in deciding whether elderly persons should be disqualified for physical reasons, a new disqualification for persons over seventy years of age is recommended.

Experience has indicated that a master list of "approximately three" times as many jurors as were used in the county in the preceding biennium is larger than necessary. In the interest of economy, it is recommended that the required number be changed to "not less than two times and not more than three." Flexibility in this regard will be particularly helpful in the larger counties.

The present statute is silent as to who determines whether pooling of jurors shall be undertaken in a particular county. It is recommended that this duty be assigned to the senior regular resident superior court judge.

To clarify the status of a juror excused to serve at a later session, it is recommended that the law specify that a juror required to so serve shall be considered on such occasion the same as if he were a member of the panel regularly summoned for jury service on that occasion.

Other amendments would require the clerk to report to the register of deeds "within ten days" the names of excused jurors, and to notify him of the names of all additional (formerly talesmen) jurors not selected in the regular manner.

A final amendment would restore the State's right to challenge peremptorily six jurors for each defendant in a capital case, and four jurors for each defendant in all other criminal cases. The underlined words were inadvertently omitted when this particular provision was transferred from Chapter 15 to Chapter 9 in the 1967 revision.

VI. AMENDMENTS TO THE GENERAL STATUTES TO TAKE INTO ACCOUNT THE EXISTENCE OF THE COURTS OF APPEALS.

The 1967 Court of Appeals Act fitted the Court of Appeals organizationally and jurisdictionally into the Appellate Division of the General Court of Justice, making amendments in Chapter 7A, Judicial Department, as necessary to accomplish this purpose. No effort was made in that statute to include amendments to many other chapters of the General Statutes that made reference to the Supreme Court, which, until then, had been the only court in the Appellate Division. Since 1967 an exhaustive search of the General Statutes has been conducted, and about 90 sections requiring amendment to take into account the existence of the Court of Appeals have been located. The amendment to the vast majority of these sections consists merely in substituting "Appellate Division" for "Supreme Court"; in a few instances specific reference to the Court of Appeals, or to its judges, clerk, or reports, was called for. In no case has the jurisdiction of the Appellate Division, as set forth in Chapter 7A, been affected. In a few instances modernization of the language of the particular statute was undertaken as a part of the necessary change; no change in substance was intentionally made.

VII. REVISION OF STATUTES RELATING TO THE JUDICIAL COUNCIL

The statutes (G.S. 7-448 et seq.) providing for the Judicial Council have not been amended since the current court reorganization efforts became effective in 1965, and therefore they no longer properly reflect the organization of the State's judicial system. For example, no judge of the Court of Appeals or of the District Court Division is authorized to sit as a Council member. In addition, the duties of the Council - generally to study the administration of justice in the State and recommend changes as needed in the laws with respect thereto - have been overlapped in part by duties assigned to the Administrative Office of the Courts and to the Courts Commission. While liaison between these various agencies has been adequate and should be encouraged, duplication of responsibility should be minimized.

Currently the law provides for only two members of the General Assembly on the Council. Experience leads the Courts Commission to believe that the Council would be more influential if legislative representation on the Council were increased. The Commission recommends an additional two members - one from each House of the General Assembly - on the Council. The Chief Judge of the Court of Appeals, or his designee on the Court, and two Chief District Judges should also be accorded Council membership. To keep the Council from becoming unwieldy in size, the Commission recommends that the members appointed by the State Bar Council be reduced from four to two. These changes should result in a Council whose membership is appropriately representative of all levels of the General Court of Justice, and which has sufficient legislative orientation to assure proper consideration of its legislative proposals.

In recent years the Judicial Council, mindful of the mandate given by the General Assembly in 1963 to the Courts Commission to implement the major

structural changes in the court system required by the Constitutional amendments of 1962, has concentrated its studies and recommendations on improvements in substantive and procedural law, particularly in the criminal law field. This self-imposed limitation has worked well. The Courts Commission, composed largely of legislators with several years experience in the court reorganization movement, has recommended many major organizational and jurisdictional changes which have been well received by the General Assembly. At the same time the Judicial Council has been able to devote its more limited resources to correcting troublesome areas of the substantive and procedural law.

The experience of recent years has made it increasingly apparent that court reorganization is not a one-shot proposition. The work of the Commission is not yet finished, and already the Commission can foresee that many of its earlier recommendations will require monitoring in the years to come to assure that the system operates efficiently, and that adjustments are made in the judicial machinery as required from time to time to guarantee this objective. The Commission accordingly recommends that a legislatively-oriented body similar to the Courts Commission be continued for the indefinite future, to oversee the operations of the General Court of Justice, and to recommend improvements in the system as needed. The Judicial Council should be continued also, of course, but with its field of responsibility focussed on the substantive and procedural law area in which it so ably fills a continuing need.

The Commission believes that these proposals, as a package, will result in elimination of overlapping responsibilities, assure proper coverage of all areas of demonstrable need, give the Council the membership appropriate to its mission, and provide continuous surveillance of the overall administration of justice so necessary to maintaining efficiency.

VIII. CONCLUSION

Action by the 1969 General Assembly on the recommendations of the Courts Commission summarized in this report will bring the Commission to the three-quarters point. A final biennium remains in which to finish the eight-year task of implementing the constitutional amendments of 1962.

At this writing (January, 1969) it is foreseeable that minor adjustments or additions may be required to the major items of Commission legislation enacted by the 1965, 1967, and 1969 sessions of the General Assembly. In this category will fall revision of the few remaining sections of General Statute Chapters 2 (clerks of superior court), 6 (costs of court), and 7 (the "old" court system), and their transfer to Chapter 7A. For the most part these sections are miscellaneous remnants which can not be altered until the last seventeen counties of the State switch to the new district court system in December, 1970. Also, at the same time several hundred sections of the General Statutes which refer to the office of the justice of the peace will require amendment or repeal. A final segment of this "clean-up" effort will be study and modernization of certain facets of our small claims procedures at present set out in various places in our general statutes other than Chapter 7A, Judicial Department. These include, for example, the summary ejectment procedures of Chapter 42, and the small claims and claim and delivery procedures of Chapter 1.

The most significant duty of the Commission in the coming biennium may be implementation of various proposed amendments to Article IV of the Constitution. Proposals are pending before the 1969 General Assembly to

amend the Constitution to provide among other things that lawyers only are eligible for judgeships, that a uniform discipline and removal system be authorized for judges, and that trial by jury be waivable in superior court. If these measures are ratified by the General Assembly and approved by the people at the next succeeding general election, the task of recommending implementing legislation may become the duty of this Commission.

APPENDIX A

RESOLUTION 73

A JOINT RESOLUTION PROVIDING FOR THE APPOINTMENT OF A COMMISSION WHICH SHALL BE CHARGED WITH THE RESPONSIBILITY OF MAKING RECOMMENDATIONS TO THE GENERAL ASSEMBLY NECESSARY TO IMPLEMENT THE JUDICIAL ARTICLE OF THE CONSTITUTION.

WHEREAS, Article IV of the Constitution of the State of North Carolina was amended in 1962; and

WHEREAS, the new Judicial Article requires changes in the courts of the State to be made by January 1, 1971;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. There is hereby created a Commission to be known as the Courts Commission. The Commission shall consist of fifteen members to be appointed jointly by the Governor, the President of the Senate, the Speaker of the House of Representatives and the chairman of the House and Senate Judiciary Committees. The members of the Commission shall serve for terms expiring December 31, 1970, unless the work of the Commission should be sooner completed. At least eight of the members so appointed shall be members or former members of the General Assembly. The Commission shall elect one of its members as chairman. Vacancies shall be filled by the Commission.

Sec. 2. It shall be the responsibility of the Commission to prepare and draft the legislation necessary for the full and complete implementation of Article IV of the Constitution of North Carolina. The Commission shall proceed as expeditiously as practicable, and shall make its initial recommendations to the 1965 Session of the General Assembly immediately upon the convening thereof.

Sec. 3. The Commission shall meet at such times and places as the chairman may designate. The facilities of the State Legislative Building shall be available to the Commission for its work. The members of the Commission shall be paid such per diem, subsistence and travel allowances as are prescribed in the Biennial Appropriations Act for State boards and commissions generally. These expenses shall be paid out of the Contingency and Emergency Fund.

Sec. 4. The Commission is authorized to employ an executive secretary and such clerical and other assistance and services as the Commission may deem necessary for the proper performance of its duties. The salary of the executive secretary shall be fixed by the Commission and shall not be deemed to include his expenses. The executive secretary shall serve at the pleasure of the Commission.

Sec. 5. This Resolution shall become effective upon its adoption.

In the General Assembly read three times and ratified, this the 11th day of June, 1963.